

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:13CR388
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
HECTOR TOMAS GALVEZ QUEBEDO,)	
)	
Defendant.)	

The Court has received the Revised Modified Presentence Investigation Report and Addendum (“PSR”), and the Defendant's Statement of Position on Objections to PSR and supporting index (Filing Nos. 26 and 27). The government adopted the PSR. (Filing No. 25.)

Having reviewed the Defendant's submissions and the decisions of the Eighth Circuit in *United States v. Viezcas-Soto*, 562 F.3d 903 (8th Cir. 2009), and *United States v. Adams*, 716 F.3d 1066 (8th Cir. 2013), as well as applicable California statutes and case law, this Court agrees with the well-reasoned dissent of Judge Gruender in *Viezcas-Soto*. (562 F.3d at 909-16). Nonetheless, the Court is bound by Eighth Circuit precedent. Accordingly, the government must be prepared to prove, by a preponderance of the evidence, that the Defendant's prior offense was a felony within the meaning of section 2L1.2(b)(1)(A)(ii) of the Guidelines, in light of Eighth Circuit precedent.

The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Accordingly,

IT IS ORDERED:

1. The Defendant's Statement of Position on Objections to PSR (Filing No. 26) will be heard at the sentencing hearing;
2. The Court intends to adopt the PSR in all other respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, these tentative findings are final; and
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 23rd day of April, 2014.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge